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Court : Patna

Decided On : Jul-30-2010

Judge : Rakesh Kumar, J.

Acts : Code of Criminal Procedure (CrPC) - Section 482, 319, 468, 395; Indian Penal Code (IPC) - Section 302, 307, 325, 323, 342 read with 34; Arms Act - Section 27

Appeal No. : CRIMINAL MISCELLANEOUS No.31881 OF 2000

Appellant : Neelam Kumari, and ors.

Respondent : State of Bihar, and anr.

Advocate for Def. : Mr. Ansarul Haque, Adv.

Advocate for Pet/Ap. : Mr. Bindeshwar Kumar, Adv.

Judgement :

1. Two petitioners, while invoking inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, have prayed for quashing of an order dated 20.9.2000 passed in Sessions Trial No.222 of 1999 by the Additional Sessions Judge-II, Gaya. By the said order, the learned trial court had summoned the petitioners to face trial along with other accused persons.

2. Short fact of the case is that on the written report of opposite party no.2, an F.I.R. vide Gaya Muffasil P.S. Case No.94 of 1989 was registered against seven

named accused persons including the petitioners for the offence under Sections 307, 325, 323, 342/34 of the Indian Penal Code and 27 of the Arms Act. Subsequently, after the death of victim, Section 302 of I.P.C. was added in the case. However, after investigation, the police submitted charge sheet against four accused persons and both the petitioners were not forwarded for the trial by the police. The case was committed and at the stage of trial, five witnesses were examined and thereafter, prosecution on the basis of evidence brought on record showing involvement of the petitioners, in the case, filed a petition for summoning the petitioners to face trial along with other accused persons, who were already on trial.

3. Aggrieved with the order dated 20.9.2000, both the petitioners approached this Court by filing the present petition, which was admitted on 10.12.2001 and this Court also granted an interim order of stay.

4. Shri Bindeshwar Kumar, learned counsel appearing on behalf of the petitioners, while challenging the impugned order, firstly submits that both the petitioners were F.I.R. named accused in the present case and as such they were accused and under Section 319 of the Code of Criminal Procedure, the petitioners were not required to be summoned. It was submitted that Section 319 of the Code of Criminal Procedure categorically says that only those persons can be summoned under that provision, who are not accused. It was submitted that since petitioners were already accused in the case, the learned Sessions Judge was not authorized to exercise power under Section 319 of the Cr.P.C. for summoning the petitioners. Learned counsel for the petitioners has further submitted that after 11 years from the date of occurrence, the learned Sessions Judge had taken cognizance of the offence against the petitioners and summoned them, which was barred under the provisions of Section 468 of the Code of Criminal Procedure. It was submitted that the learned Sessions Judge, while summoning, had observed that offence under Section 323 of the Indian Penal code is made out against petitioners and as such in view of limitation prescribed under Section 468 of the Code of Criminal Procedure, after the period of one year, cognizance of the offence was not required to be taken by the learned Sessions Court. Learned counsel for the petitioners has also relied on a judgment of Hon'ble Supreme Court reported in

AIR 1992 SC 268 (State of Assam v. Abdul Halim & others). Learned counsel for the petitioners has pointedly placed paragraph-7 of the said judgment. It was submitted that in that case also, the court was of the view that after the expiry of period of limitation, the Sessions Court was not authorized to summon the appellant of the said case. On aforesaid ground, it has been prayed that the impugned order may be set aside. Learned counsel for the petitioners has argued that at least, the petitioner no.1, who was lady, should not have been summoned by the court below.

5. Shri Ansarul Haque, learned Additional Public Prosecutor, appearing on behalf of the State, has vehemently opposed the prayer of the petitioners.

6. Besides hearing learned counsel for the parties, I have also perused the materials available on record. I have minutely perused the F.I.R. as well as the impugned order. In the F.I.R., it was mentioned that in the occurrence in which one person was killed, the petitioners had also participated. Of course, it is not required for this Court to give a specific opinion regarding participation of the petitioners in the murder of the brother of the informant, but fact remains that both the petitioners were named accused in the F.I.R. for an offence under Section 302 and other allied Sections of the Indian Penal Code and 27 of the Arms Act. However, after investigation, both the petitioners were not forwarded by the police and the case was subsequently committed to the court of Sessions. From the impugned order, it appears that after five witnesses were examined and sufficient materials were brought on record showing involvement of both the petitioners, a petition was filed by the prosecution for summoning petitioners also to face trial along with other accused persons, who were facing trial. The learned Sessions Judge has minutely examined the evidence brought on record and thereafter, satisfied with the allegation against the petitioners he passed the impugned order. So far as the impugned order is concerned, the court is of the opinion that it is not a fit case for interfering with the said order. So far as question raised by the learned counsel for the petitioners that since the petitioners were F.I.R. named accused, the power under Section 319 of the Code of Criminal Procedure was not required to be invoked against the petitioners is concerned, I am of the view that such submission is only required to be noticed for its rejection. Long back in a case

reported in AIR 1979 Supreme Court 339 (Yogendra Singh v. State of Punjab), this point was made clear. If an F.I.R. accused is not forwarded/charge sheeted by the police, he cannot be considered as an accused to divest the power under Section 319 of the Code of Criminal Procedure. The judgment of State of Assam (Supra), which was referred by learned counsel for the petitioners, has also got no relevance in the facts and circumstances of the present case. In Abdul Halim's case (Supra), after summoning the accused, accused had preferred a revision petition before the High Court of Assam and same was allowed. Thereafter, the learned Sessions Judge made a reference under Section 395 of the Code of Criminal Procedure to the High Court on the point that the judgment of the High Court was in conflict with the law settled by Hon'ble Supreme Court in Yogendra Singh's case (Supra). The said reference was heard by a Division Bench of Assam High Court and the Division Bench expressed its opinion that in view of judgment of Supreme Court in Yogendra Singh's case (Supra), the decision given by the learned Single Judge in criminal revision was not a good law. However, since no one appeared on behalf of either of the parties, the Hon'ble Supreme Court was of the view that after 18 years of the occurrence, it was not advisable to direct the appellants to face trial.

7. Accordingly, in view of the facts and circumstances as indicated above, particularly law laid down by the Hon'ble Supreme Court in Yogendra Singh's case (Supra), this Court has got no option but to reject the present petition. Accordingly, the petition stands rejected.

8. In view of rejection of this petition, interim order of stay dated 10.12.2001 stands automatically vacated.

9. Let a copy of this order be sent to the court below forthwith.

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